IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.561 OF 2005
IN
NOTICE OF MOTION NO.1049 OF 2005
IN
SUIT NO.1005 OF 2005

Bhagat Electors & Development Services(I) Ltd..Appellant
V/s
Brookhill Tower "C" & "D" Wing CHS Ltd. .. Respondent

Mr.Sanjay Jain i/by M/s.Legal Juris for the Appellant.
Ms.Sumedha Rao for the Respondent.

CORAM: DR.S.RADHAKRISHNAN &
S.C.DHARMADHIKARI, JJ.
DATE : 21.10.2005.

P.C.:

1. Heard the learned Counsel for the parties. The learned Counsel for both the parties are agreeable for this Appeal being disposed of. By this Appeal, the Appellant is challenging an order dated 27.4.2005 passed by the learned Single Judge by way of an ad-interim order. The main Notice of Motion is yet to be finally heard and disposed of. Pursuant to our order dated 16.8.2005 the Appellant has already deposited Rs.1,74,000/- in this Court with regard to Flat C-701. With regard to Flat C-101, C-102 & D-101 it appears that the said flats have already been sold and the new purchasers have approached the Society for being admitted as its members and they have made certain part payments with regard to the society dues directly to the Society.

2. The learned Counsel for the Appellant states that for the quarter starting from October, 2005 the Appellant will pay the Municipal Charges at Rs.5936/-

and Service Charges at Rs.6150/- directly to the Society. The deposit of Rs.1,74,000/- that has been made by the Appellant in this Court towards the arrears, will finally be determined by the learned Single Judge while deciding the Notice of Motion.

3. Having regard to the facts and circumstances of the case, we are of the view that, by the the impugned order dated 27.4.2005 the learned Single Judge ought not to have granted certain mandatory reliefs at the ad-interim stage itself. Hence the impugned order dated 27.4.2005 is set aside. However we make it clear that the Respondent-Plaintiff is at liberty to argue and claim for these reliefs at the time of final hearing of the Notice of Motion.

3. We make it clear that our setting aside the impugned order will not in any way prevent the learned Single Judge from considering all the reliefs strictly on its own merits.

4. We further make it clear that the aforesaid deposit of Rs.1,74,000/- made by the Appellant, and all other quarterly payments to be made by the Appellants will be without prejudice to his rights and contentions.

5. Hearing of the Notice of Motion No.1049 of 2005 is expedited. Parties are at liberty to move the learned Single Judge for a fixed date of hearing.

(DR.S.RADHAKRISHNAN, J.)

(S.C.DHARMADHIKARI, J.)